

1 TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
2 BOARD FOR LICENSING CONTRACTORS

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TRANSCRIPT OF THE PROCEEDINGS

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January 26, 2010

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Reported by: Tracy Foley-Wilkes

1 BOARD MEMBERS PRESENT:

- 2 Ms. Cindi DeBusk, Chair
Mr. Keith Whittington, Vice Chairman
3 Mr. Frank Neal, Member
Mr. Jerry Hayes, Member
4 Mr. Marvin Sandrell, Member
Mr. Mark Brodd, Member
5 Mr. Jack Ronnie Tickle, Member
Mr. Ernest M. Owens, Member
6 Mr. Reese Smith, Member

7

8 STAFF MEMBERS PRESENT:

- 9 Mr. Wayne Pugh, Deputy General Counsel
Mr. Michael Driver, Staff Attorney
10 Ms. Jenny Gray, Staff Attorney
Ms. Nicole Canter, Paralegal
11 Ms. Telise Roberts, Assistant Director
Ms. Carolyn Lazenby, Executive Director
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1	TABLE OF CONTENTS	
2		
3		Pages
4	CALL TO ORDER	
5	Roll Call	4
6	Agenda (Review/Adopt)	4 - 5
7	Hardships Approved by Executive Director	5
8	November 2009 Board Meeting Transcript	5 - 6
9	ANNUAL REQUIREMENTS	
10	2010 Officers	6 - 7
11	Robert's Rules of Order	7 - 8
12	Conflict of Interest	8
13	Per Diem - Power of Attorney	8 - 9
14	REVIEW/APPROVAL/DENIED ITEMS	
15	Interviewed/Waived Applicants	9 - 23
16	Revisions	23
17	LLE Applicants	23 - 25
18	Home Improvement Applicants	25 - 29
19	LEGAL REPORT	32 - 48
20	DISCUSSION TOPICS	
21	Workers' Compensation Update	48 - 50
22	Legislation	50 - 54
23	Hardship Policy - Revised	54 - 62
24	March Board Meeting - March 30-31	63
25	ADJOURN	64

1 CHAIR DeBUSK: I'd like to welcome
2 everyone. I'd like to call to order the Tennessee
3 Contractor's Licensing Board meeting, held on
4 January 26th, 2010.

5 I'll start the meeting with a roll call
6 to my left.

7 MEMBER TICKLE: Ronnie Tickle. Memphis.

8 MEMBER OWENS: Ernest Owens. Memphis.

9 MEMBER BRODD: Mark Brodd. Knoxville.

10 MEMBER NEAL: Frank Neal. Nashville.

11 CHAIR DeBUSK: Cindy DeBusk. Knoxville.

12 MEMBER WHITTINGTON: Keith Whittington.

13 Johnson City.

14 MEMBER HAYES: Jerry Hayes. Paris.

15 MEMBER SMITH: Reese Smith. Franklin.

16 MEMBER SANDRELL: Marvin Sandrell.

17 Columbia.

18 CHAIR DeBUSK: The agenda states
19 review/adopt the agenda as written.

20 Do we have any changes?

21 MEMBER WHITTINGTON: Make a motion that
22 we accept the agenda as written.

23 CHAIR DeBUSK: Second?

24 MEMBER TICKLE: Second.

25 CHAIR DeBUSK: All in favor, say "aye."

1 BOARD MEMBERS: Aye.

2 CHAIR DeBUSK: Motion carries.

3 Next item is the hardships.

4 A number of these have been approved by
5 various board members.

6 I'll entertain a motion for approval of
7 the hardships.

8 MEMBER NEAL: So moved.

9 MEMBER TICKLE: Second.

10 MEMBER SMITH: Ms. DeBusk, I'd like to
11 have the hometown.

12 CHAIR DeBUSK: Okay.

13 Carolyn, on the hardships, add the
14 hometown to the list. Is that easily done?

15 MS. LAZENBY: Yes.

16 CHAIR DeBUSK: Okay.

17 All in favor, say "aye."

18 BOARD MEMBERS: Aye.

19 CHAIR DeBUSK: Any opposition?

20 (Pause)

21 CHAIR DeBUSK: Motion carries.

22 Okay. The agenda states to approve the
23 November 2009 board meeting -- the transcript.

24 Do we have a motion to approve the
25 November 2009 transcript?

1 MEMBER BRODD: So moved.

2 CHAIR DeBUSK: Oh --

3 MEMBER WHITTINGTON: The Annual
4 Requirements.

5 CHAIR DeBUSK: Well, let's approve the
6 board meeting minutes. We'll continue this and then
7 we'll go back.

8 MEMBER WHITTINGTON: Okay. Got you.

9 CHAIR DeBUSK: Do we have a motion to
10 approve?

11 MEMBER NEAL: Second.

12 CHAIR DeBUSK: All in favor, say "aye."

13 BOARD MEMBERS: Aye.

14 CHAIR DeBUSK: Motion carries.

15 Then we're going to go -- we'll move up
16 the agenda one because I just skipped the annual
17 requirements.

18 I'm going to turn the meeting over to
19 Carolyn Lazenby.

20 MS. LAZENBY: Okay. This is our annual
21 requirements that we do in January of every year,
22 according to the law and according to the policy of the
23 Department.

24 One of the things we do is, our law does
25 require for us to elect officers each January. Our

1 policy has been in the past that the board members would
2 serve two terms. It would be up to this board to ratify
3 that and keep the same officers.

4 Cindy DeBusk would be chair, Keith
5 Whittington would be vice chair, and Frank Neal would be
6 secretary.

7 Again, this would be the second term, so
8 it's up to you-all.

9 MEMBER SMITH: I'd like to make a motion
10 to re-elect our slate of officers for 2010.

11 MEMBER HAYES: Second.

12 CHAIR DeBUSK: Discussion?

13 (Pause)

14 CHAIR DeBUSK: All in favor, say "aye."

15 BOARD MEMBERS: Aye.

16 CHAIR DeBUSK: Opposition?

17 (Pause)

18 CHAIR DeBUSK: Motion carries for
19 officers for 2010.

20 MS. LAZENBY: The other -- the next item
21 is they've asked us to adopt Robert's Rules of Order.
22 Each year that's what we're going to use, so if somebody
23 wants to -- if you-all want to keep that, you need to
24 make a motion to keep the Robert's Rules -- utilizing
25 those for the board members.

1 MEMBER NEAL: I make a motion we adopt
2 Robert's Rules of Order.

3 MEMBER BRODD: Second.

4 CHAIR DeBUSK: All in favor, say "aye."

5 BOARD MEMBERS: Aye.

6 CHAIR DeBUSK: Motion carries.

7 MS. LAZENBY: The next item is the
8 conflict of interest statements. We have to do these
9 every year, also. We try to get those done at the
10 January board meeting.

11 So if you-all would be sure to look at
12 those and sign them before you leave today. Part of the
13 audit process is making sure you know you should recuse
14 yourself if you have any prior knowledge or any other
15 conflicts. So that's not anything you have to vote on,
16 just make sure you sign those before you leave.

17 And the other thing that we do every
18 year is the per diem power of attorney. That's to make
19 sure you-all get paid. For some reason if you don't
20 sign your travel claim -- I think most of the time we
21 don't have any issue, but this is so it won't hold it up
22 any more than they should be held up and making sure if
23 you-all are -- don't get it signed, Staff will sign it
24 in your absence. But we would always photocopy it and
25 let you know we signed your name if that happened.

1 That was something else we need you-all
2 to sign before you leave today. It's the same one that
3 you signed last year.

4 I think that's all I have. Thank you.

5 CHAIR DeBUSK: Under Tab 4, we have our
6 interviewed and waived applicants.

7 We need to approve the names behind
8 Tab 4.

9 Do we have a motion?

10 MEMBER NEAL: I have one. I don't know
11 if it's behind 4 or not.

12 MS. LAZENBY: I think yours would come
13 under interviews.

14 Are we doing them all at once?

15 CHAIR DeBUSK: We're doing the
16 interviewed and waived applicants. Then we'll do the
17 revisions and the LLE applicants.

18 MS. LAZENBY: Oh. Okay. Then this will
19 be --

20 MEMBER NEAL: I have one that was an
21 interview that came about as a result of notification to
22 the Board of a contractor whose application has been
23 submitted for a license that had bid on five projects,
24 prior to submitting an application for the license.

25 The president of the company came in for

1 interview. This firm is from North Carolina and had a
2 reasonably good explanation, up to a point, as to why he
3 did not feel initially that a license was required.

4 In two instances he contacted the
5 engineer for the prospective job, and they said they
6 didn't think there was any need for a license and for
7 him to go ahead and submit his bid. Which he did.

8 And he is supplying meters, but, in
9 addition to supplying those meters, he installed those
10 meters. It's one of those jobs where you take the
11 invitation to bid that said how much per meter are you
12 going to submit your bid for and it was 30 bucks or
13 50 bucks, and you multiply it by 5,000 meters, then,
14 obviously, you get into an area that certainly would
15 require a license.

16 He supplied and completed two of those
17 jobs, in effect, as a sub-contractor for the
18 manufacturer. Well, that doesn't fly either. The
19 manufacturer doesn't have a license before this board,
20 so there's not much you could do about that.

21 One job was in Blountville, Tennessee,
22 and it totaled about \$150,000. And one in White Pine
23 was about \$40,000. They were completed in February and
24 April of '09. Those two jobs were the ones that
25 supposedly the manufacturer of the meter was awarded the

1 contract and then he, in turn, subbed this work out to
2 the applicant for this license.

3 Then there were two other jobs --
4 Bloomington-Kingsport area, and one in Portland,
5 Tennessee.

6 He sent in a bid again on a request to
7 the engineer. They didn't think he needed a license to
8 do what he was going to do.

9 In the meantime, he found out he did
10 need a license. So he sent a letter and withdrew both
11 of those bids.

12 Finally, in October of '09, he did the
13 same thing for a job for \$400,000, and the engineer did
14 not open his bid. And he withdrew it after the fact.

15 So all that said, he now has an
16 application that qualifies in all respects for a license
17 that he's now asking for. And I told him that it would
18 be the decision of the Board as to what monetary consent
19 order the Board might agree to for him to sign for, in
20 effect, quasi violating our licensing law.

21 I would recommend to the Board that our
22 attorneys send a letter to him notifying him that on
23 these jobs he, in effect, did offer to engage -- or
24 whatever -- and ask him to sign a consent order for a
25 thousand dollars for each job.

1 Then it comes to the point as to when
2 his license can be issued. Ordinarily, I believe it's
3 been our policy in the past to let the six-month period
4 start at some time, based upon notification of the Board
5 that a violation had taken place.

6 In this case, in view of other
7 circumstances, I would recommend -- and, you know, it's
8 up to you-all -- whatever you want to do -- that we
9 start his six months in October. Which was the last
10 time he tried to do anything at all and withdrew the bid
11 at that point in time because I think he found out that
12 somebody was going to complain about the fact that he
13 was an unlicensed contractor and submitting a bid.

14 So that would be -- what?

15 CHAIR DeBUSK: Shouldn't the six months
16 start from the time we have knowledge of it? Which is
17 now, not October.

18 MEMBER NEAL: Ordinarily, yes, okay.
19 He was a nice guy.

20 CHAIR DeBUSK: I think it should be
21 six months from the time the Board has knowledge of when
22 he last contracted. When he violated the law.

23 MEMBER NEAL: Well, that's October.

24 CHAIR DeBUSK: Well, we have knowledge
25 right now. I think it should be six months from now.

1 What if it was eight months ago?

2 MEMBER NEAL: We had knowledge, I guess,
3 sometime in the middle of January, right?

4 So what you're saying is you want him to
5 not have a license until June?

6 CHAIR DeBUSK: Yes. That's what I'm
7 saying.

8 MEMBER NEAL: Does that agree with
9 everybody?

10 (Pause)

11 MEMBER NEAL: Any other comments?

12 MEMBER TICKLE: Looks like he got bad
13 information himself from --

14 MEMBER NEAL: I guess I was --

15 MEMBER TICKLE: -- the engineers who
16 were telling him you don't have to have a license.
17 Instead of checking to see, he went by somebody who he
18 thought was in charge and should know right from wrong.
19 And he's kind of a victim of circumstance.

20 I see where Cindy's coming from. I see
21 where you're coming from. I would like to split the
22 difference.

23 MEMBER NEAL: Okay.

24 MEMBER TICKLE: I say that because of
25 circumstances that --

1 MEMBER NEAL: Well, in all honesty, I
2 told the guy -- I said, you know, if I just look at the
3 papers, then, you know, it's pretty cut and dry. But
4 when he comes over here from North Carolina and explains
5 his situation, as he did, I probably became a little bit
6 prejudiced in his favor.

7 From the standpoint that I agree with
8 you, he was led down the path by somebody. That doesn't
9 mean --

10 MEMBER TICKLE: It's not right. It's
11 just --

12 MEMBER NEAL: He should have known, but
13 when somebody that's taking the bids -- the engineer
14 takes the bid and tells him, "No, you don't need one.
15 You're only supplying this stuff. There's nothing to
16 install. You just hook it up."

17 As I told him, all they're looking for
18 is the cheapest price that they could find. And if he
19 happened to be it, then that's fine.

20 In two instances he basically operated
21 as a sub because they gave the contract to the
22 manufacturer.

23 MEMBER TICKLE: Then he turned around
24 after he found out he was in the wrong and backed out on
25 those other two bids. So I think, you know, that shows

1 that he was trying to do right.

2 That's my opinion.

3 MEMBER NEAL: He holds a license in
4 North Carolina, but he just got that. He hadn't had to
5 have a license there -- for whatever reason. But they
6 did give him a license two weeks before he made
7 application for this one.

8 MEMBER WHITTINGTON: Do we actually have
9 a motion yet?

10 CHAIR DeBUSK: Are you going to make a
11 motion?

12 MEMBER NEAL: Well, I was going to,
13 but -- I mean, there's varying opinions.

14 CHAIR DeBUSK: Go ahead and make a
15 motion.

16 MEMBER NEAL: Well, six months from
17 October would be one time. Three months from October
18 would be another time.

19 MEMBER TICKLE: Make a motion -- can I
20 make a motion?

21 MEMBER NEAL: Yeah.

22 CHAIR DeBUSK: You can make a motion.

23 MEMBER TICKLE: Make a motion that
24 starting January -- January 1 -- that he would get his
25 license three months from January 1.

1 MEMBER NEAL: Okay. So January,
2 February, March -- so April 1st.

3 MEMBER TICKLE: April 1, he would be
4 able to get his license. And he's still fined a
5 thousand dollars for each instance.

6 That's my motion.

7 CHAIR DeBUSK: Do we have a second?

8 MEMBER BRODD: I'll second.

9 MR. DRIVER: If I can say something --
10 I'll tell you exactly where it is in the statute. It's
11 62-6-120(a)(2). "Any person, firm, or corporation that
12 engages or offers to engage in contracting without a
13 license is ineligible to receive the license until
14 six months after a determination by the Board that a
15 violation occurred."

16 CHAIR DeBUSK: So you're determining
17 today that a violation has occurred? The Board?

18 MEMBER NEAL: I mean, it would be when
19 the complaint was filed. As long as it was
20 substantiated, I don't mind. There's little difference
21 between --

22 MEMBER WHITTINGTON: Say that again.

23 CHAIR DeBUSK: What page are you on?

24 MS. LAZENBY: Page 324 in your blue
25 book.

1 CHAIR DeBUSK: Okay.

2 (Board examines documents.)

3 MEMBER WHITTINGTON: I kind of read it
4 that the Board determined it today.

5 CHAIR DeBUSK: Yes.

6 MEMBER BRODD: That takes us back to our
7 first motion, doesn't it?

8 MEMBER TICKLE: Well, it appears I have
9 to withdraw my motion.

10 I withdraw my motion.

11 MEMBER NEAL: Okay. Well, I make a
12 motion that we go six months from today. He will be
13 granted his license and that there will be no fine
14 involved with the five offenses.

15 CHAIR DeBUSK: No fine? Why? He
16 contracted without a license.

17 MEMBER NEAL: Well, you know, he's not
18 going to have a license for six months. He can't
19 contract anymore.

20 CHAIR DeBUSK: He needs to be penalized
21 for what he did.

22 MEMBER NEAL: You don't think not
23 getting your license for six months -- I mean, you've
24 got jobs that he can't bid isn't going to penalize him?

25 CHAIR DeBUSK: It's 90 days.

1 MEMBER NEAL: It's six months.

2 CHAIR DeBUSK: I understand, but you
3 were originally wanting -- I mean, it's six months from
4 now, but you originally wanted April 1st. Now, it's
5 June 1st.

6 MEMBER NEAL: Okay.

7 CHAIR DeBUSK: I'm just saying he still
8 needs to be fined. Because then that's going to set a
9 precedence for others to come to the Board and say,
10 well, you didn't fine this person.

11 MEMBER NEAL: We don't fine everybody
12 where there's a problem.

13 CHAIR DeBUSK: Look at the dollar
14 amounts. He's bidding \$400,000 jobs.

15 MEMBER NEAL: He didn't get them.

16 CHAIR DeBUSK: I thought he got three.

17 MEMBER NEAL: He got two. And those two
18 jobs he got as a sub-contractor where he doesn't have to
19 have a license anyway.

20 CHAIR DeBUSK: Okay. So you have a
21 motion on the table for --

22 MEMBER NEAL: And he withdrew on all
23 three of the other projects. So he hasn't -- he did
24 these two jobs, but he didn't violate the law in doing
25 those two jobs because they awarded it to the supplier.

1 MEMBER TICKLE: The person that violated
2 was the supplier.

3 MEMBER NEAL: Right. Because he doesn't
4 have an application.

5 MEMBER TICKLE: You're exactly right.
6 It's the supplier who's at fault.

7 CHAIR DeBUSK: No, but he did the jobs.

8 MEMBER TICKLE: But he did them for the
9 supplier. So the supplier should -- he was a
10 sub-contractor for the supplier. At that point he
11 didn't need a license.

12 CHAIR DeBUSK: Okay. But if the
13 sub-contractor works without a license that would be
14 their fault because they didn't --

15 MEMBER NEAL: Not if they're not
16 required to have a license. No. It's not their fault.

17 MEMBER BRODD: Did he submit the bids?

18 MEMBER NEAL: He didn't submit a bid on
19 the two that he was given the jobs. He was given the
20 job by the guy who was awarded the contract.

21 These other three he bid, but withdrew
22 by letter. He turned them into the engineer, but he
23 withdrew them when he found out that he had to have a
24 license.

25 CHAIR DeBUSK: Okay.

1 So what's your motion?

2 Restate your motion.

3 MEMBER NEAL: The question is whether he
4 did -- he did offer, in a sense, to engage -- so from
5 that standpoint, he did, I guess. He didn't -- he
6 withdrew them --

7 MEMBER BRODD: Okay. Two of them that
8 were awarded, he didn't offer?

9 MEMBER NEAL: No. He was contracted by
10 the supplier to install them.

11 CHAIR DeBUSK: Restate your motion.

12 MEMBER NEAL: Somebody else. I'm too
13 close to the fan.

14 MEMBER SMITH: Do we have a motion?

15 MEMBER WHITTINGTON: No. We don't have
16 a motion yet.

17 CHAIR DeBUSK: No. We need to do
18 something.

19 MEMBER WHITTINGTON: Well, you had a
20 motion that nobody seconded. Is that right?

21 MEMBER TICKLE: Reese, what's your
22 opinion?

23 MEMBER SMITH: That we approve the
24 license and hold it for six months from today --
25 whenever that is -- and that he be fined a thousand

1 dollars.

2 CHAIR DeBUSK: Do we have a second?

3 MEMBER NEAL: Second.

4 CHAIR DeBUSK: Discussion?

5 (Pause)

6 CHAIR DeBUSK: All in favor, say "aye."

7 BOARD MEMBERS: Aye.

8 CHAIR DeBUSK: Opposition?

9 (Pause)

10 CHAIR DeBUSK: Motion carries.

11 MEMBER NEAL: So since there's a fine by

12 consent order, you'll send him a letter and tell him

13 what the results are and the Board's decision?

14 MS. LAZENBY: Correct.

15 MEMBER NEAL: Thousand dollar fine,

16 consent order, and license held for six months from

17 today.

18 MEMBER WHITTINGTON: Madam Chairman, I'd

19 like to offer a motion that we go ahead and approve the

20 rest of the interviewed and waived applicants.

21 CHAIR DeBUSK: Do we have a second?

22 MS. LAZENBY: I think Frank has one

23 more.

24 MEMBER NEAL: No.

25 MS. LAZENBY: You don't want to bring

1 that one up?

2 MEMBER NEAL: No. He's already got his
3 ticket.

4 CHAIR DeBUSK: Do we have a second to
5 Mr. Whittington's motion?

6 MEMBER BRODD: Second.

7 CHAIR DeBUSK: Discussion?

8 (Pause)

9 CHAIR DeBUSK: All in favor, say "aye."

10 BOARD MEMBERS: Aye.

11 CHAIR DeBUSK: Opposition?

12 (Pause)

13 CHAIR DeBUSK: Motion carries.

14 Next item --

15 MR. DRIVER: Mr. Neal, that other one
16 that you wanted -- they were interviewed, so it's
17 probably best that you go ahead and go through it and
18 the Board approve it by motion.

19 MEMBER NEAL: Can we not just add their
20 name to the interview list?

21 I mean, we -- I --

22 MR. DRIVER: But they weren't on the
23 list as approved by the Board.

24 MEMBER NEAL: Can we not just add their
25 name on the list as being approved?

1 What he's talking about is I did an
2 interview this morning. I mean -- but I did several
3 others and I don't know if they were all on this list or
4 not, but this one was not on the list because --

5 MS. LAZENBY: It's on the list, but --

6 MR. DRIVER: Well, then, we're fine. If
7 it's on the list, then we're fine.

8 MS. LAZENBY: Yeah. It's on the list.
9 It does say violation, but it wasn't --

10 CHAIR DeBUSK: Okay. Next item on the
11 agenda are the revisions. And that's behind Tab 5.

12 Do we have a motion to approve the
13 revisions that are listed?

14 MEMBER BRODD: So moved.

15 MEMBER SMITH: Second.

16 CHAIR DeBUSK: Discussion?

17 (Pause)

18 CHAIR DeBUSK: All in favor, say "aye."

19 BOARD MEMBERS: Aye.

20 CHAIR DeBUSK: Opposition?

21 (Pause)

22 CHAIR DeBUSK: Motion carries for the
23 revisions -- revised applicants.

24 Tab 6, LLE.

25 I make a motion that we approve the

1 names on the list. Oh, I can't make a motion, okay.

2 I have three on the list that I'm not
3 approving -- Chad Pain -- am I allowed to say the name?

4 MR. DRIVER: Yes. They're just on the
5 applicant list.

6 CHAIR DeBUSK: Chad Pain, his license
7 expired in 2002, and he moved out of the state. And
8 from what I can tell, he was not working in the
9 industry. So I denied because he needs to take the
10 test. We've had code changes. He has to re-test.

11 The second one is Darian Houston. He
12 has a felony, and I denied him based on the criminal
13 history.

14 And the third one, Denny Crutts --
15 C-R-U-T-T-S. I denied him. His license expired in 1999
16 and he was not working in the industry under another
17 company, so he needs to re-test, as well.

18 I'd like to approve -- okay. I've
19 approved all the other names on the list.

20 Do I have a motion to approve the names
21 on the list, other than the three I just named?

22 MEMBER TICKLE: Motion.

23 MEMBER WHITTINGTON: Second.

24 CHAIR DeBUSK: Any discussion?

25 (Pause)

1 CHAIR DeBUSK: All in favor, say "aye."

2 BOARD MEMBERS: Aye.

3 CHAIR DeBUSK: Any opposed?

4 (Pause)

5 CHAIR DeBUSK: Okay. Motion carries for
6 the LLEs.

7 Next item on the agenda -- Home
8 Improvement Applicants.

9 And from my understanding -- and it's
10 behind Tab 7 -- from my understanding, we had two
11 applicants from behind Tab 7, and we're waiting on
12 recommendation letters.

13 So are you wanting to approve the two
14 applicants based on recommendation letters -- once we
15 receive those?

16 MS. LAZENBY: You could.

17 MEMBER SMITH: They both had felonies.
18 How does that differ from LLE felonies?

19 CHAIR DeBUSK: They didn't ask me to
20 view them. I'm not sure --

21 MEMBER SANDRELL: Several, not just one.
22 In several counties.

23 CHAIR DeBUSK: And the home
24 improvement -- well, what happened with the felonies?

25 MEMBER OWENS: I asked for a letter from

1 a preacher -- a reference letter, more or less. He
2 didn't have any in the application.

3 CHAIR DeBUSK: But say they're
4 burglary -- I don't know -- I haven't looked at them and
5 we're giving them a home improvement license to go to
6 people's homes and work.

7 MEMBER OWENS: That's why I asked for a
8 letter from a preacher or someone. He had no
9 recommendation letters with his application.

10 MEMBER NEAL: Well --

11 MEMBER SMITH: Is he on probation?

12 MEMBER NEAL: No. He served his time,
13 you know, and he's been out. He's married and got a
14 family, you know, that's why we kind of agreed that if
15 he could come up with a recommendation from his
16 preacher --

17 CHAIR DeBUSK: How much time has lapsed?

18 MEMBER WHITTINGTON: Ten years. Twelve.

19 MS. LAZENBY: 1998.

20 CHAIR DeBUSK: Has he been working in
21 the industry in the last 10 or 12 years?

22 MEMBER SMITH: This is home improvement,
23 so you don't need much to work in the industry.

24 (Laughter)

25 CHAIR DeBUSK: I don't know.

1 MEMBER NEAL: He just wants a license.
2 He has been working.

3 CHAIR DeBUSK: Can he get a reference
4 letter from his employer?

5 MEMBER NEAL: I think he's just been
6 kind of working odd jobs.

7 MR. DRIVER: I'm not sure there's
8 anything I'm aware of in the Home Improvement law
9 regarding reference letters.

10 I mean, now, could you deny based on the
11 felony? Yes, but, you know --

12 MEMBER NEAL: I think the point is they
13 don't want to deny it. They want to give him every
14 opportunity to have a license, but they don't just want
15 to grant it on the basis that it's been submitted.

16 MR. DRIVER: You can -- it does say that
17 you can refuse to issue a license if the person is not
18 of good moral character, so you can base it on that.

19 MEMBER NEAL: We're not trying to deny
20 it.

21 MR. DRIVER: Right.

22 MEMBER NEAL: We're trying to approve
23 it.

24 MEMBER WHITTINGTON: We take these one
25 by one and make a motion that we wait until we obtain

1 the letter of reference that Member Ernest Owens, has
2 asked for.

3 MEMBER OWENS: The only letter I got was
4 from the individual -- from himself. Nothing from a --

5 MEMBER WHITTINGTON: Is that to say you
6 don't expect to get any more?

7 MEMBER OWENS: I expect to get some
8 more.

9 MEMBER WHITTINGTON: Okay.

10 MEMBER OWENS: But what I'm saying is
11 the only one I got is from the applicant. If we could
12 get a letter from a preacher or somebody that he has
13 done work for, is fine with me -- other than himself.

14 He mentioned that he had been -- he was
15 going to church and he had been doing some charity work,
16 but all of that was from him. I don't know whether he
17 did that or not.

18 MEMBER WHITTINGTON: I'll make a motion
19 that we approve the application applicable to roofing
20 upon receipt of a satisfactory letter to Board Member
21 Ernest Owens' satisfaction.

22 MEMBER NEAL: Second.

23 CHAIR DeBUSK: Discussion?

24 (Pause)

25 CHAIR DeBUSK: All in favor, say "aye."

1 BOARD MEMBERS: Aye.

2 CHAIR DeBUSK: Opposition?

3 (Pause)

4 CHAIR DeBUSK: Okay. Motion carries.

5 MEMBER WHITTINGTON: I don't know

6 anything about the next one.

7 CHAIR DeBUSK: Who knows about the next

8 applicant?

9 MEMBER SANDRELL: I've looked at it and

10 pretty much the same deal. Several felonies in several

11 counties. Blah, blah, blah. I asked for the same -- a

12 letter. Same situation.

13 MEMBER WHITTINGTON: You got a motion?

14 MEMBER SANDRELL: Make a motion.

15 MEMBER OWENS: Second.

16 CHAIR DeBUSK: Discussion?

17 (Pause)

18 CHAIR DeBUSK: All in favor, say "aye."

19 BOARD MEMBERS: Aye.

20 CHAIR DeBUSK: Opposed?

21 (Pause)

22 CHAIR DeBUSK: Motion carries.

23 MR. DRIVER: What was the substance of

24 that motion?

25 MEMBER SMITH: Same as the first.

1 MEMBER TICKLE: Letters of
2 recommendation.

3 CHAIR DeBUSK: Okay. At this point I'm
4 going to turn the meeting over to Michael Driver for our
5 legal report.

6 MR. DRIVER: Okay. The legal report --
7 I believe Ms. Canter is going to pass out copies of the
8 report.

9 If you could all look, the Residential
10 Subcommittee amended the report as follows:

11 Number 8 on the report -- which the
12 recommendation was changed from a \$5,000 civil
13 penalty -- I'll wait until you-all are ready.

14 Number 8 was changed from a \$5,000 civil
15 penalty to a \$1500 civil penalty.

16 Number 9, the recommendation was changed
17 from a thousand dollar civil penalty to a \$250 civil
18 penalty.

19 Number 11, a six-month suspension was
20 added to the civil penalty.

21 Number 16, if the judgment was
22 satisfied, it's a \$1,000 civil penalty; if not, it's a
23 \$5,000 civil penalty.

24 MEMBER NEAL: That was number 16?

25 MR. DRIVER: 16. Yes, sir.

1 Number 33 was changed from a thousand
2 dollar civil penalty to a \$5,000 civil penalty.

3 Number 39 was changed from a \$5,000
4 civil penalty to a \$25,000 civil penalty.

5 MEMBER NEAL: How much was that one?
6 \$2,500?

7 MEMBER TICKLE: \$25,000.

8 MR. DRIVER: From \$5,000 to \$25,000.

9 Number 48 was changed from \$2,000 to
10 \$10,000.

11 MEMBER NEAL: \$10,000?

12 MR. DRIVER: Yes, sir.

13 Number 51 was changed from \$1,000 to
14 \$5,000.

15 Number 54, it was recommended to accept
16 the offer to settle for \$2,500.

17 It's my understanding that the rest of
18 the reports -- residential, commercial, and home
19 improvement was approved by the appropriate
20 sub-committees.

21 If you could all review the report and
22 let me know if there are any more changes the Board
23 would like to make.

24 CHAIR DeBUSK: You had a subcommittee,
25 too?

1 MEMBER SMITH: Yes.

2 MR. DRIVER: Numbers 1 through 56 of
3 residential were reviewed by the residential
4 subcommittee.

5 The commercial recommendations were
6 reviewed by {Mr. Budd, and the home improvement
7 recommendations were approved by the home improvement
8 subcommittee is my understanding.

9 CHAIR DeBUSK: So we need a motion to
10 approve based on the changes you just mentioned,
11 correct?

12 MR. DRIVER: Those were the changes
13 recommended by the subcommittee.

14 MEMBER NEAL: I make a motion, then,
15 that the residential, commercial, and home improvement
16 reports be approved as shown with the amendments made.

17 MEMBER SMITH: Second.

18 CHAIR DeBUSK: Okay. Any discussion on
19 the changes?

20 (Pause)

21 CHAIR DeBUSK: Okay. All in favor, say
22 "aye."

23 BOARD MEMBERS: Aye.

24 CHAIR DeBUSK: Opposed?

25 (Pause)

1 CHAIR DeBUSK: None. Motion carries.

2 MR. DRIVER: That's all.

3 CHAIR DeBUSK: Would you like -- you
4 going to introduce Jenny?

5 MR. DRIVER: This is Ms. Jenny Gray
6 (indicating). She will be handling the administrative
7 attorney duties for the Board from here on.

8 I believe she went to Nashville School
9 of Law, as a local, and went to Austin Peay University.

10 I think she'll do a great job for
11 you-all.

12 I'm moving over to handle administrative
13 procedures act -- formal hearings exclusively after this
14 meeting. It's been a fun time to work with you-all.

15 CHAIR DeBUSK: Well, welcome Jenny Gray.
16 We're happy to have you.

17 MS. LAZENBY: She's a great help
18 already.

19 MR. PUGH: Madam Chairman, if you like,
20 I'll address that a little bit.

21 I'm the deputy general counsel for all
22 the regulatory boards.

23 We have re-organized our legal
24 department. We've added four attorneys as litigation
25 attorneys. Michael is moving over to that litigation

1 division. That's why Jenny is being brought in to act
2 as your board attorney. She'll be here with you every
3 meeting.

4 Michael -- this will probably be his
5 last meeting with you -- full meeting. But he will
6 start doing the formal hearings -- which we are going to
7 gear up to have a lot more. We've got 2900 open
8 complaints department-wide and of that, 600 of them are
9 in front of this board.

10 So this next year that's my -- my focus
11 is to get those matters moving, get them heard where we
12 need to get them heard, and get them closed where we
13 can.

14 When I say "closed," that's not just to
15 close out cases. We want things regulated. We want it
16 done right. That's why we've added new attorneys and
17 beefed up the staff. The Assistant Commissioner is
18 fully behind this, so that's why the changes were made.

19 I didn't want you to -- I know in the
20 last year -- two years you-all have had kind of a
21 revolving door of attorneys. That's why Michael's
22 leaving. He's not -- he's not leaving the department.
23 We're just changing gears a little bit.

24 CHAIR DeBUSK: In the past Michael has
25 done an excellent job at our formal hearings, so --

1 MR. PUGH: And I hope he continues.

2 CHAIRMAN DeBUSK: Yes. For the next
3 year.

4 I'm going to turn the meeting over to
5 Carolyn Lazenby for the legal -- no. I'm sorry. For --
6 we have some discussion topics.

7 MS. LAZENBY: Right. This is behind
8 Tab 8.

9 CHAIRMAN DEBUSK: 8, 9, and 10. Right?

10 MS. LAZENBY: House Bill 2625. I think
11 Jenny has put this together.

12 MS. GRAY: The first two pages are the
13 summary of what the bill proposes to do. And I -- if --
14 I can -- you can read it, or I can explain it.

15 Basically, it creates a criminal
16 offense under Title 39 and for home improvement service
17 providers, so -- we're not really used to that term, but
18 that's the term this bill uses to do certain things.

19 And, basically, the offense begins with
20 a written request by the homeowner to be provided a
21 refund. And the elements that would create the offense
22 would be an intent to defraud -- and I'm not sure what
23 would prove that.

24 But the elements would be no substantial
25 portion of the contract work has been performed at the

1 time of the written request, more than 45 days have
2 elapsed since the starting date in the contract, and a
3 copy of the written request for refund was sent by the
4 homeowner to the Consumer Protection Division.

5 In the summary I have pointed out a
6 couple of issues -- you know, just where we're not sure
7 of the definition of certain things. So that is pointed
8 out.

9 MS. LAZENBY: This bill also -- Michael
10 and I sat in on the committee with Representative Dunn,
11 along with a couple of other representatives. And the
12 Attorney General's office participated in it. They
13 were -- they were real open. They wanted ideas. They
14 wanted ways to protect the consumer so if somebody --
15 say a fly-by-night home improvement guy pulls up, and if
16 it can be proved that his intent is to go out there and
17 take money and just do -- a lot of them will do a little
18 bit of work -- just enough to, you know, make it look
19 like they did something, and leave the job and never
20 come back -- then this will make it theft.

21 MS. GRAY: And also, I've just mentioned
22 the written request -- 45 days have elapsed. Another
23 part is if they materially deviate from the contract,
24 which is defined as if the amount billed for is
25 substantially greater than the amount quoted in the

1 contract or the materials used are of substandard
2 quality but the homeowner was charged for higher
3 quality.

4 And also a deviation occurs if the
5 provider deviates from plans specified in the contract
6 without written consent. So -- which causes substantial
7 damage to the homeowner's property.

8 So -- that's also, you know, I guess,
9 part of what they thought needed to be fixed.

10 MEMBER NEAL: I've just kind of glanced
11 at this. Probably I'm wrong in my assumption, but is
12 this saying, in effect, it has to go to court and a
13 judge has to say that they're guilty before the home
14 improvement license can be revoked?

15 MS. GRAY: No. I think it's a separate
16 offense. The -- what -- the Board really is affected
17 most by the part of the bill that requires the Board --
18 and this is on the second page at the bottom -- requires
19 the Board to revoke the license of the contractor if
20 notified by the Court of a conviction of theft, under
21 what I've just explained, and whereas the Court is now
22 allowed to pull a license based on a conviction, you-all
23 are now, under the law, allowed to reissue that license.

24 But under this new bill it would be --
25 you may reissue it, unless these things happen -- which

1 is they have not -- they have to serve their entire
2 sentence, and they also -- and they -- you cannot
3 reissue if it was a second violation of what I just
4 explained.

5 MEMBER NEAL: On Page 8 there
6 (indicating), Section 5 says Tennessee Code Annotated
7 Section 62-6-118(a) is amended by adding the following
8 new Sub-Division 2 and re-designing existing
9 sub-divisions accordingly: The Board shall revoke the
10 license of any contractor or home improvement contractor
11 or home improvement service provider upon receipt of
12 notification from the Court, in accordance with
13 39-14-153(d) of such person's conviction for violation.

14 That's my question.

15 I mean, do you have to wait?

16 MR. PUGH: No, sir. You do not have to
17 wait. It's just giving you -- or telling you that the
18 Board shall revoke it on that conviction. But you don't
19 have to wait for that conviction.

20 MEMBER NEAL: So the Board can still
21 take action?

22 MR. PUGH: The Board can still take
23 action on the underlying fact -- or grounds to revoke a
24 license on the underlying fact. You can revoke the
25 license. And, actually, on a situation where there's a

1 conviction like that, my preference would be that the
2 bill reads that the license would be automatically
3 revoked.

4 MEMBER NEAL: By the Court?

5 I agree.

6 MR. PUGH: By the Board on that
7 conviction.

8 MEMBER NEAL: Upon that conviction, it's
9 automatically revoked? They don't have to come before
10 the Board?

11 MR. PUGH: The Board can take action on
12 the underlying fact.

13 MEMBER NEAL: I agree.

14 MS. LAZENBY: Part of our meeting --
15 they also was wanting to know why we didn't educate
16 people more. They feel like if we educated people, if
17 we advertised, if we were more proactive, it would be a
18 lot less -- people would be knowledgeable and a lot less
19 of these activities would happen.

20 And I did tell them that you-all have
21 voted -- I guess it was 2006 -- '7 where you-all have
22 voted to take all the fees generated for new
23 applications -- I think it comes to \$200,000 back then.
24 So it's an approximate figure -- to use it for consumer
25 education.

1 So they went ahead and added that in
2 here. So you-all -- it's now -- would be law that
3 you-all -- the Board could take monies. And they even
4 added that when funding was available. They took into
5 consideration of the bad economic times, that we can
6 advertise and educate the public. So they made this
7 part of the law.

8 MEMBER NEAL: Have you figured out how
9 to get the money?

10 I don't know how we're going to get the
11 money.

12 MS. LAZENBY: We'll have lots of money
13 in a couple of years.

14 MEMBER WHITTINGTON: Is this request to
15 ask the Board to endorse this bill?

16 MS. LAZENBY: Yes.

17 MEMBER WHITTINGTON: I'm not 100 percent
18 sure --

19 MS. LAZENBY: Yes. They are asking --

20 MEMBER WHITTINGTON: Everyone wants us
21 to educate the public, but then when we do have excess
22 funds, they come in and raid our accounts and leave us
23 with an empty shelf and no teeth to back it up.

24 I've got just a couple questions about
25 the bill, to start with, and that's the violation --

1 who -- the Judge is going to determine that. So there's
2 going to have to be a lawsuit?

3 It's just kind of -- if a contractor
4 were to make a deviation based on his judgment -- or
5 something -- and the owner were to disagree, then it's
6 going to have to go before a judge to be argued out?

7 Are we opening up a can of worms, if we
8 endorse this? That the owner just at his whim can say
9 you made that change up there and I think you've damaged
10 my property, and then all of a sudden we're going to
11 have a contractor lose his license because an owner says
12 it's damaged, even though it may or may not be?

13 I've got -- that was the first thing
14 that kind of struck me. I know what the bill is after,
15 and that's to protect the consumer. And I respect that.
16 But at the same time -- after years of looking at
17 legislation -- every good intent conceals a bad intent,
18 and I'm not sure that I, for one, can back it.

19 MR. DRIVER: I do want to make clear --
20 if you look at Subsection (b) there (indicating) where
21 it says it is an offense for a home improvement services
22 provider with intent to defraud to -- and that follows
23 down to Number 2, which is deviate from or disregard
24 plans or specifications --

25 MEMBER WHITTINGTON: I'm just raising

1 that as a concern. I'm not saying I don't support the
2 intent.

3 MS. LAZENBY: And they discussed that,
4 too. They don't want that to happen. But they are
5 trying to get after the ones that that's the intent
6 because --

7 MEMBER WHITTINGTON: The reality of it
8 is that there are just as many homeowners out there
9 looking to get by and not pay their responsibilities to
10 the contractor as there are contractors that are trying
11 to scam someone. And I'm just pointing it out, as a
12 matter of fact, that if we open it up to allow them to
13 do that, they will.

14 CHAIR DeBUSK: This is information for
15 the Board. I'm not so sure -- I don't think we need a
16 motion to approve -- this is more information, right?

17 MS. LAZENBY: They wanted us to ask the
18 Board to support the bill.

19 CHAIR DeBUSK: But I don't think we
20 bring that in form of a motion, do we?

21 MR. PUGH: I think they're asking for
22 the Board's thoughts on the bill.

23 MS. GRAY: Yeah. I think we were just
24 asked for those in support and those in opposition and
25 any comments to that effect. And anybody that's

1 neutral.

2 CHAIR DeBUSK: So this is a discussion
3 point?

4 We don't have to have anything in the
5 form of a motion?

6 MS. GRAY: I don't believe so.

7 MR. SMITH: I think you might take that
8 back to them.

9 And tell me, they keep referring to
10 "home improvement services." Is that a BCA or BCB?

11 MR. DRIVER: It's defined on Page 1 of
12 that bill.

13 Not Page 1 of -- if you turn, I think a
14 couple pages from where you are. One more.

15 MEMBER NEAL: The bill itself?

16 MR. DRIVER: Right. The actual bill.

17 CHAIR DeBUSK: On Page 2?

18 MR. DRIVER: It's at the bottom of
19 Page 1 going to the top of Page 2.

20 MEMBER WHITTINGTON: This could be a
21 home improvement contractor; it could be a building
22 contractor. The way I see it, it's the way the contract
23 is written. It means we're going to have to write
24 contracts better.

25 MEMBER SMITH: It says the license can

1 be reissued if all of the members vote in favor.

2 MEMBER TICKLE: Probably ought to be a
3 majority, not all.

4 MEMBER SMITH: I'm aware it's for
5 discussion -- and we don't write many bills -- but
6 that's sure to get my attention.

7 MS. GRAY: And, I'm sorry. I was
8 mistaken. We have been asked to get a vote on support
9 and opposition and comments -- which, you know, that's
10 just what we've been requested. I just want to make
11 that clear.

12 MEMBER NEAL: By the sponsor?

13 MS. LAZENBY: They asked if we would
14 show this to the Board and get you-all's support or --

15 MEMBER SMITH: I'm like Keith, I don't
16 want to throw the baby out with the wash and get in
17 front of the wrong judge somewhere for a couple of minor
18 infractions and all of a sudden you're going to take my
19 license.

20 MEMBER NEAL: Well, not only that. It
21 pretty well reads like the fact that -- you know, you're
22 given an out, Mr. Home Improvement Contractor, just give
23 the person all their money back and it'll go away. And
24 that's pretty tough.

25 CHAIR DeBUSK: Did they --

1 Representative Dunn -- the House Bill 2625 -- did anyone
2 contact board members to get their opinion when they
3 were writing this to --

4 MS. LAZENBY: No.

5 MEMBER WHITTINGTON: Did they ask the
6 Home Builders Association?

7 MR. HARRIS: No.

8 CHAIR DeBUSK: I'm not sure how we can
9 have a motion to approve something that we didn't have a
10 hand in?

11 MEMBER NEAL: Since it's home
12 improvement, I sure think the Home Builders Association
13 ought to have looked at before it comes to us.

14 MS. LAZENBY: And I thought they had. I
15 thought they had mentioned that they got with Home
16 Builders Association.

17 MR. HARRIS: They didn't get with us.

18 MEMBER SANDRELL: If you-all don't mind
19 me asking -- like the 45 days -- I mean, there's a
20 number of things that can delay a start of a project,
21 either the builder or remodeler -- or homeowner --
22 something changes and now they contracted and for some
23 reason they may not want to begin right then. So I
24 guess that's a concern.

25 The other thing, Carolyn, are they

1 looking for anything else in this code?

2 MS. LAZENBY: Not that I know of. They
3 didn't mention to us that they were.

4 CHAIR DeBUSK: I defer to the counsel.
5 What do you want us to do?

6 MR. DRIVER: I think that's going to be
7 at the discretion of the Board. Again, the opinion was
8 requested, but that's the Board's determination.

9 MS. GRAY: And you are given the option
10 to vote neutral, or, you know, it says comments, so --

11 MEMBER WHITTINGTON: I think our
12 comments from the record should be taken back and allow
13 the sponsor of the bill to read those comments, plus --
14 and I'm going to make this in the form of a motion --
15 that our comments from the record be taken back to the
16 sponsor of the bill as concerns of the members of the
17 board. And, also, we, as the Board, would recommend
18 that the sponsor get with the Home Builders Association
19 and related industries and draft out a more palatable --
20 and I guess I should remain a little neutral, but as a
21 home builder/remodeler -- perhaps something that's not
22 solely intended to put a builder out of business or a
23 remodeler out of business.

24 CHAIR DeBUSK: You're getting into
25 comments.

1 MEMBER WHITTINGTON: Yes. I'm just
2 making a motion.

3 CHAIR DeBUSK: Restate your motion.
4 Does everybody understand his motion?

5 (Pause)

6 CHAIR DeBUSK: Okay. Do we have a
7 second?

8 MEMBER TICKLE: Second.

9 CHAIR DeBUSK: Discussion?

10 (Pause)

11 CHAIR DeBUSK: All in favor, say "aye."

12 BOARD MEMBERS: Aye.

13 CHAIR DeBUSK: Opposed?

14 I oppose. Just because I'm totally
15 confused. But motion carries.

16 Okay. Carolyn, you want to talk
17 about --

18 MEMBER NEAL: From what the bill says,
19 it has to be unanimous. You have to agree.

20 MEMBER TICKLE: You hear what Frank just
21 said?

22 CHAIR DeBUSK: Yes. I'm processing it.

23 MEMBER TICKLE: It says in the bill you
24 have to have 100 percent.

25 CHAIR DeBUSK: Oh, unanimous?

1 MEMBER NEAL: Unanimous what goes on.

2 And eight of us could have said yes and you said no, so
3 we have a problem. The bill is not drafted exactly
4 right.

5 CHAIR DeBUSK: I understand.

6 MEMBER NEAL: It should say "majority,"
7 at least.

8 MEMBER TICKLE: "Majority" instead of
9 "100 percent." At least that.

10 CHAIR DeBUSK: Do we need to do anything
11 about that?

12 MEMBER SMITH: No. We made that
13 recommendation.

14 CHAIR DeBUSK: Okay.

15 MS. LAZENBY: Workers' Comp. I just
16 wanted to give you-all an update. You-all are probably
17 more aware of it than I am, but we've been flooded with
18 calls constantly over this. But it was -- it has --
19 it's in the process of being repealed.

20 Has it been signed?

21 MR. HARRIS: Yes.

22 MS. LAZENBY: It's got signed today?

23 MR. HARRIS: It got signed.

24 MEMBER SMITH: What does it say?

25 MS. LAZENBY: The workers' comp law that

1 we had that went into effect January 1st has now been
2 repealed until March 2011.

3 And if I'm understanding these, there's
4 other bills out there that might make some amendments
5 and further changes. But right now, we go back by the
6 law of the way it was before -- on who we required to
7 show proof of insurance.

8 CHAIR DeBUSK: That would cut down on
9 the phone calls into your office?

10 MS. LAZENBY: It should. Just those in
11 limbo are having a real hard time. There were those
12 that were in the process of changing over, and they were
13 just caught in the middle. And they've come up here
14 personally saying what do we do, what do we do.

15 And, you know, they met with their
16 insurance agents, their attorneys, and they have told
17 them go see the Board and they'll tell you what to do.

18 So we pretty much told them the law
19 looks like it's not going to stay in effect, so stay
20 as-is. So they have to decide whether or not they're
21 going to revert back or -- so it's -- a lot of them,
22 though, have voiced their concerns about it -- very
23 upset, very frustrated. And it's been a very expensive
24 change that they've had. A lot of them have spent so
25 much money trying to revert, so going back and forth.

1 So they are very upset. But looks like it's repealed,
2 so it should cut down on calls.

3 The next thing I want to discuss --
4 well, we'll talk about legislation. There are some more
5 bills out there. This isn't anything we have to vote
6 on. It's just for your information only.

7 If you take one and pass it.

8 You can take this with you, but there
9 are a couple of bills -- there's one that would require
10 on the outside of the bid envelope, in addition to the
11 three trades, in the geothermal it would require the
12 masonry contractor to be listed on the outside of the
13 bid envelope.

14 And then on back of that bill on page --
15 Bill 2700, this is regarding public contracts. And the
16 last bill -- 2748 is also on public contracts. I don't
17 know a whole lot about these, but you can look at it and
18 if you have questions, we might can --

19 MEMBER NEAL: Which one were you saying
20 was the one about masonry sub-contractor?

21 MS. LAZENBY: The first one. House
22 Bill 2794.

23 MEMBER NEAL: Does anybody have any idea
24 why they want to list the masonry sub-contractor?

25 MR. HARRIS: Ask her. Ask Carolyn.

1 MS. LAZENBY: There was a complaint that
2 a masonry contractor -- an unlicensed masonry
3 sub-contractor was working. But after I explained that
4 a masonry sub-contractor isn't required to be licensed,
5 I think that upset some people in the industry and they
6 wanted --

7 MEMBER NEAL: I guess the next thing
8 they'll want is a painter.

9 MS. LAZENBY: A drywaller --

10 MEMBER NEAL: Drywall or a lawn mower.
11 Then you'll have to have a big an envelope as that
12 blackboard up there (indicating) to list all the subs.

13 (Laughter)

14 MS. LAZENBY: I mean, if this is
15 something you-all --

16 MEMBER NEAL: I can't imagine why
17 anybody would do that.

18 MS. LAZENBY: I'm not sure if this
19 law -- this bill would even -- there's another law that
20 actually tells what sub-contractors have to be licensed.
21 If that's not passed -- I mean, this is passed --

22 MR. HARRIS: No. This is just
23 introduced.

24 MS. LAZENBY: No. I mean, but if it
25 does get passed, would this make it so sub-contractor

1 masonries have to be licensed?

2 MR. DRIVER: No.

3 MR. YOUNG: ABC are opposed to this
4 piece of legislation. It's difficult enough now in
5 trying for the general contractor on bid day just to get
6 the electrical and HVAC listed.

7 MEMBER NEAL: I would certainly hope,
8 Mr. Young, that you would encourage your cohorts with
9 the Home Builders Association -- ABC -- or whomever --
10 and this board -- I recommend going on record as
11 opposing this bill.

12 MEMBER BRODD: I'll second that.

13 MEMBER NEAL: I mean --

14 MR. YOUNG: Will you take that motion --
15 that action to ABC?

16 MEMBER NEAL: Sure. I'd be glad to.
17 But I'd like this Board to get on record as opposing it,
18 also.

19 MEMBER TICKLE: Make a motion.

20 CHAIR DeBUSK: He did and Mark seconded
21 it.

22 Any discussion?

23 (Pause)

24 CHAIR DeBUSK: All in favor, say "aye."

25 BOARD MEMBERS: Aye.

1 CHAIR DeBUSK: Opposition?

2 (Pause)

3 CHAIR DeBUSK: Motion carries.

4 It would be nice when people are writing
5 this stuff if they would contact the Board and get our
6 opinion or interview us individually, if that would
7 help.

8 MR. YOUNG: Charles Fergus is a masonry
9 contractor and he kind of carries a lot of bills for the
10 sub-contracting industry, but somebody suggested this,
11 so --

12 MS. LAZENBY: You-all have any questions
13 about the other bills?

14 MEMBER NEAL: Could I ask our court
15 reporter to go off, so I can ask Mr. Young a question?

16 MR. PUGH: No, sir. Not in an open
17 meeting.

18 MEMBER NEAL: Okay. I'll ask you later.

19 MR. YOUNG: Carolyn, you might want to
20 touch on that construction managers on correctional
21 facilities since you-all dealt with that last year.

22 MS. LAZENBY: Is that the --

23 MR. YOUNG: 2754.

24 MS. LAZENBY: What's the house bill
25 number?

1 MR. YOUNG: 2754.

2 If you remember last year you-all dealt
3 with the definition of construction manager on
4 correctional facilities, and there was a huge issue
5 between the architectural engineers and contractors over
6 that.

7 We sat down and hashed out what the
8 definition was in your law book under what those
9 architectural engineering services are.

10 Well, they're applying what was done
11 last year to school construction this year, and we're on
12 record of supporting that. And it's come from AIA --
13 American Institute of Architects. It just clarifies the
14 same thing you've got on correctional facilities now on
15 school construction.

16 There's no -- as of yesterday -- there's
17 no senate sponsor. It's just a house bill right now.

18 MS. LAZENBY: I'll try to e-mail you
19 these bills as they come up, so you-all are aware more.
20 I think that's it on the legislation.

21 Behind Tab 10 is the hardship policy.

22 The two items highlighted are -- I'm
23 going to ask you-all if we could add this to our policy.

24 The first -- 1 (b) a change in law
25 requires immediate action, such as workman's

1 compensation requirement. We did have several people
2 call at the last minute in December saying I need --
3 because of the workers' comp law, I need to be
4 considered a corporation or LLC by January 1st. And, of
5 course, they could not get a hardship letter from an
6 owner because it wasn't really a problem for the owner.

7 But I'm just wanting to see if we could
8 grant hardship changes -- and a board member would still
9 sign-off, but we would just waive the letter from the
10 owner.

11 And the second one is a change in
12 ownership requiring a new license application by law.
13 Board policy has been to allow the licensee to use --
14 the new owner to use the license for 90 days to prevent
15 destruction of property -- of the projects going. But
16 there's nothing in law that says you can do that. But
17 if we had -- if we allowed them to get a hardship
18 license instead of waiting until the Board met, they
19 would not have to stop a project. We have these -- I
20 guess we get change in ownership, maybe ten a meeting,
21 wouldn't you say?

22 A lot of them are hardship related, but
23 they just don't want to go to the owner and say, okay,
24 I've sold the company and I need you to do this letter.
25 And the owner -- you know, they would be waiting for the

1 owner to do the letter. They wouldn't be allowed to
2 just come to us.

3 MR. DRIVER: If I can, I would strongly
4 recommend that the Board make this into a rule. I'm not
5 sure -- given that it's affecting the amount of people
6 in the public that it is, it should be in a policy form.

7 Quite, frankly, certainly, I would
8 strongly recommend against any policy allowing the
9 license to be used by a new owner for 90 days. There's
10 nothing in the law allowing that.

11 MEMBER WHITTINGTON: Is the hardship
12 policy a rule?

13 MR. DRIVER: It is not.

14 MS. LAZENBY: There's criteria for us to
15 go by and the law says -- allows us to maybe grant it
16 before -- prior to the board meeting by the director.

17 And so, you know, this was something
18 that, you know, really needs something -- a policy set
19 up. You-all did not want me just issuing licenses.

20 CHAIR DeBUSK: 1(b) will be a moot point
21 after March --

22 MS. LAZENBY: It would be, but we
23 just -- I guess I'm trying to think ahead.

24 MEMBER WHITTINGTON: Well, it says a
25 change in law, such as workers' comp.

1 CHAIR DeBUSK: So in the future, if
2 there's a change.

3 MS. LAZENBY: Yes. And it's something I
4 would make you-all aware of, but it was just -- in
5 December we were a little -- you know, what do we. We
6 have all these people needing to change.

7 CHAIR DeBUSK: Change in law is just a
8 global statement.

9 MS. LAZENBY: Right.

10 CHAIR DeBUSK: They gave workers' comp
11 as an example, but we're saying globally through every
12 change in law -- for whatever reason.

13 MS. LAZENBY: Yes. It would be just
14 something -- I was trying to come up with something in
15 cases that we're having. We don't have to do that.

16 MEMBER NEAL: If we don't continue the
17 Board's policy of allowing 90 days to have an
18 acquisition to take place, I don't know how we're going
19 to handle it.

20 MR. DRIVER: I'm -- what I'm suggesting
21 is that the Board should handle it through a rulemaking
22 proceeding since it's affecting members of the public.

23 MEMBER NEAL: Can we make a rule that
24 says we allow -- the Board desires to allow 90 days for
25 substitution of acquisition of companies?

1 MR. DRIVER: I think that would be the
2 better way to handle it. Of course, that would be --

3 MEMBER WHITTINGTON: Carolyn's asking if
4 we change it to go ahead and make a requirement that
5 they get a new license instead of us continuing to give
6 them 90 days. Is that --

7 MEMBER NEAL: If you say a new
8 license --

9 MEMBER WHITTINGTON: If you're buying a
10 business that ought to just be part of buying the
11 business. You got to get the bank financing arranged
12 for it. You've got to get your insurance requirements
13 for it. You've got to get your licensing requirements
14 for it. That ought to just be part of it. Why should
15 we give them 90 more days?

16 MEMBER NEAL: I'll give you a classic
17 example that's happened in Nashville, Tennessee.

18 A company was acquired by an
19 out-of-state contractor not licensed in Tennessee, but
20 they acquired this contractor and all the things you
21 talked about were done. But until they acquired it,
22 they couldn't have any change in the license.

23 On October 31st, it was finalized and
24 checks were passed.

25 On November 1st, if we didn't have the

1 90-day deal for them to get all the new information in,
2 then they would have be in violation of the law and they
3 had a gazillion dollars worth of work under contract
4 that would have stopped.

5 MEMBER WHITTINGTON: I see that point.

6 MEMBER TICKLE: They would have been out
7 of business.

8 MEMBER NEAL: They were out of business,
9 unless we granted them time to get their papers
10 together, submit a new application, and approve it.

11 And just asking for a hardship, it's
12 still going to take some time.

13 MS. LAZENBY: Yes. Even with the
14 hardship, it is. But I was trying to think of a way to
15 speed it up more, you know, for the ones that have got
16 it done, like -- you know, they have everything -- you
17 know, like on October 31st they've got everything done
18 but they have to wait for the next board meeting.

19 MEMBER NEAL: Well, without a doubt, it
20 is a hardship.

21 MS. LAZENBY: That's something where it
22 doesn't meet our criteria as a hardship to the owner.
23 Where the owner would want to do them a letter.

24 MEMBER NEAL: Well, how long does it
25 take for us to make a rule?

1 MEMBER SMITH: Eight months.

2 MEMBER WHITTINGTON: Thirty-two days.

3 MEMBER NEAL: Well, the whole thing
4 isn't going to happen in the next eight months. So, I
5 mean, you know, we're going to have to be able to do
6 something.

7 MS. LAZENBY: Most of the time we don't
8 even know when the ownership changes. It comes to us by
9 application is when we usually find out about it. So
10 this will just speed it up -- the hardship process --
11 just speed it up.

12 MEMBER WHITTINGTON: Is this --

13 MS. LAZENBY: I think it's in your
14 policy that you-all don't find them in violation. You
15 don't fine them for working.

16 MEMBER NEAL: So if you grant it on the
17 basis of -- an extension on the basis of a hardship,
18 it's just ASAP -- as soon as you can get this done get
19 it done.

20 MS. LAZENBY: Yes. I thought it might
21 help.

22 MEMBER SMITH: So why do we need to
23 change the policy?

24 MS. LAZENBY: I just wanted to add
25 that -- to just waive the letter from the owner. That's

1 all I'm wanting. We still -- everything's in place --

2 MEMBER SMITH: Still 90 days, still

3 everything -- but puts the contractor in an

4 uncomfortable position --

5 MS. LAZENBY: -- to ask the owner for a

6 letter.

7 MEMBER SMITH: I've got to play Devil's

8 advocate. If I was the owner, I might want to know I

9 was losing my partner contact to somebody from Oshkosh.

10 MEMBER NEAL: Well, I don't disagree

11 with that at all. But if he was already under contract

12 with somebody, he couldn't do anything about it anyway.

13 MS. LAZENBY: These were just

14 suggestions. We could just scratch it.

15 MR. DRIVER: It would still be my

16 recommendation that any time the Board's policy starts

17 affecting a member of the public it needs to be in a

18 rule form. That's what those rules are there for.

19 So it would still be my recommendation

20 that this and any similar policy be handled through a

21 rulemaking hearing.

22 MEMBER WHITTINGTON: Then, I take that

23 as though we need to make a motion.

24 I'm going to make a motion that the

25 attorney -- the Board's attorney commence the process

1 for a rulemaking hearing on the hardship license policy
2 for the Board.

3 Is that enough?

4 MS. GRAY: Well --

5 MEMBER WHITTINGTON: Do we need to
6 include any changes -- or any changes that we include we
7 can have this back before the Board at the next meeting.

8 MS. LAZENBY: Yes.

9 MEMBER WHITTINGTON: That's my motion.

10 CHAIR DeBUSK: Do we have a second?

11 MEMBER BRODD: Second.

12 CHAIR DeBUSK: Discussion?

13 MEMBER NEAL: So nothing really changes
14 until that rulemaking happens, right?

15 MEMBER WHITTINGTON: Correct.

16 MEMBER NEAL: Operating on the same
17 basis.

18 MR. DRIVER: And my concern is that
19 there are probably enforceability issues with the policy
20 as it exists.

21 CHAIR DeBUSK: All in favor, say "aye."

22 BOARD MEMBERS: Aye.

23 CHAIR DeBUSK: Opposition?

24 (Pause)

25 CHAIR DeBUSK: Motion carries.

1 And I guess the last item -- is
2 March 30th and 31st okay with you-all's schedule for the
3 board meeting?

4 Mr. Whittington will chair that meeting.

5 MEMBER WHITTINGTON: That's fine with
6 me.

7 MR. DRIVER: To clarify for Mr. Pugh,
8 there are meetings scheduled for the rest of the year.
9 You usually just bring it back up at the end of the
10 meeting.

11 They approved the schedule back in
12 November for the entire year. So I think in my time in
13 here --

14 CHAIR DeBUSK: It's more for
15 informational purposes.

16 MEMBER WHITTINGTON: Is that going to be
17 a two-day meeting?

18 MR. DRIVER: Yes. Unless everything
19 settles. I have no reason to not expect it will be a
20 two-day meeting.

21 CHAIR DeBUSK: Do I have a motion to
22 adjourn?

23 MEMBER TICKLE: Motion.

24 MEMBER OWENS: Second.

25 CHAIR DeBUSK: All in favor, say "aye."

1 BOARD MEMBERS: Aye.

2 CHAIR DeBUSK: Motion carries.

3 (End of the proceedings.)

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1 REPORTER'S CERTIFICATE

2
3 STATE OF TENNESSEE)
4 COUNTY OF MONTGOMERY)

5 I, Tracy Foley-Wilkes, court reporter and
6 notary public for the State of Tennessee,

7 DO HEREBY CERTIFY that the foregoing
8 transcript of the proceedings were taken on the date and
9 place set forth in the caption thereof; that the
10 proceedings were stenographically reported by me; and
11 the foregoing proceedings constitute a true and correct
12 transcript of said proceedings.

13 I FURTHER CERTIFY that I am not related to
14 any of the parties named herein, nor their counsel, and
15 have no interest, financial or otherwise, in the outcome
16 of events of this action.

17 IN WITNESS WHEREOF, I have hereunto affixed
18 my official signature and seal of office this the 10th
19 day of March, 2010.

20

21 Tracy Foley, Notary Public
22 State of Tennessee

23 My Commission Expires: May 11, 2011.
24

25